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RECENT CASES

APPEARANCE—VOID SUMMONS—EFFECT.—*AMES v. FREEMAN*, 112 PAC., 160 (KAN.).—*Held*, where a defendant is served with a void summons issued by a justice of the peace, but at the time named in the summons appears before the justice of the peace and submits himself to be sworn as a witness by the plaintiff and testifies as to the merits of the case in response to questions propounded by the attorney for the plaintiff in the presence of the justice, such conduct amounts to a voluntary appearance to the action, and is as binding as the valid service of a legal summons would have been; and a judgment entered upon such trial will not be enjoined as void.

An appearance is the proceeding by which the defendant submits himself to the jurisdiction of the court; *Crawford v. Vinton*, 102 Mich., 83; *Flint v. Comly*, 95 Me., 251; as by demurring; *Gilbert v. Hall*, 115 Ind., 549; or by making a motion which involves the merits; *Elliott v. Lawhead*, 43 Ohio St., 171; or by taking any action, except to object to the service of the writ, which recognizes the case as in court; *Lampley v. Beavers*, 25 Ala., 534. But a mere attendance at court without a full understanding of the pending action and the proceedings does not constitute an appearance; *Merkle v. Rochester*, 13 Hun. (N. Y.), 157. Neither is the execution of an attachment bond by a defendant in attachment an appearance; *Hilton & Allen v. Consumers' Can Co.*, 103 Va., 255; nor the giving of bail, after arrest under bail process; *Lanneau v. Ervin*, 12 Rich. Law (S. C.), 31. As to an appearance curing a defective summons, the weight of authority seems to be in accord with the principal case, holding that an appearance by the defendant waives all defects in the process or its service. *Childs v. Limback*, 30 Ia., 398; *Pool v. Minge*, 50 Ala., 100; *Baizer v. Lasch*, 28 Wis., 268; *Baldwin v. Murphy*, 82 Ill., 485. But some courts modify this rule, holding that a void process is not cured by appearance; *Beall v. Blake*, 13 Ga., 217; *Osgood v. Thurston*, 40 Mass., 110. In New York, however, it has been held that where a defendant appears, even though he is ignorant that the process is void, there has been a waiver. *Pixley v. Winchell*, 7 Cow. (N. Y.), 366.

BROKERS—WHEN COMMISSIONS EARNED—DEFAULT OF PURCHASER.—*WEEKS v. HAZARD*, 127 N. W., 1099.—*Held*, that a broker, employed on agreement to procure a purchaser for property on terms satisfactory to the owner, is entitled to his commission when the purchaser procured by him contracts with the owner on terms fixed by the owner, even if the purchaser fails to fully perform the contract. *Evans and Weaver, JJ., dissenting.*

A broker employed to procure a purchaser for property is entitled to his commission if through his instrumentality a valid enforceable contract of sale is entered into between the owner and the purchaser procured by